and would seem to require disclosure to the insurer even if the insured doubted the truth of the change, as even the possibility of the change affects the desirability of the risk to the insurer. The doctrine has been modified to some extent where the applicant has qualified his statements or warranties by the words "to the best of my knowledge and belief." When such is the fact the applicant is not required to notify the insurer unless he is sure of the truth of the change in the nature of the risk, or of a misrepresentation made in his statements. See note 42 L. R. A. N. S. 431. However, in the principal case, there are no qualifications, and it seems as if the court has applied the reasoning of the modified rule without the necessary facts to base that doctrine upon.

INSURANCE—WAIVER OF DEFENSE.—Insured died in 1897, and in 1914, plaintiff, wife of insured, opened negotiations with insurer, informing of the death and asking the status of the policy. Insurer replied stating that its record showed the policy to be forfeited for non-payment of a premium due in 1894. Plaintiff answered claiming death within three years so that a certain portion of the policy was payable. Insurer then forwarded blank proofs of death, but stated that the company waived no defenses. Plaintiff expended some money in preparing the proofs of death, and brought suit after insurer refused to honor the policy. *Held,* that the insurer waived not only the right to insist on the proofs of death within ninety days from the death, but also the defense of the statute of limitations, and judgment for the plaintiff. *Shearlock* v. *Mut. Life Ins. Co.,* (Mo. 1916) 182 S. W. 89.

The waiver of the two defenses is based on the request for submission of the proofs of death, and is merely the application of a doctrine universally followed as to the failure to submit the proofs within the prescribed time, but new as to the second defense. 4 COOLEY, INS., 3993; *De Farconnet* v. *West Assur. Co.,* 122 Fed. 448; *Covenant Mut. Life Ass'n* v. *Baughman,* 73 Ill. App. 544; *Bowen* v. *Preferred Acc. Ins. Co.,* 81 N. Y. Supp. 840. But since the waiver is made after the time limit has expired, the facts constituting the waiver must contain the element of estoppel. *Chandler* v. *Ins. Co.,* 180 Mo. App. 394; *Walker* v. *Knights of Maccabees,* 177 Mo. App. 50; *Hollis* v. *State Ins. Co.,* 65 Iowa 454. The *Hollis* case says that the facts need not be such that present a case of technical estoppel, and the court holds in the principal case that the expense gone to by the plaintiff in filing the proofs of death supplies this necessary element. The general statement that no defenses would be waived is held to be insufficient—there must be a specified statement not only of the refusal to waive, but also of the defenses. *Marthinson* v. *Ins. Co.,* 64 Mich. 372; *Corson* v. *Ins. Co.,* 113 Iowa 641; *Home Ins. Co.* v. *Kennedy,* 47 Neb. 138.

INSURANCE—WAIVER OF DEFENSE.—Plaintiff insured a stock of merchandise with the defendant company, the policy containing an "iron safe" clause which the plaintiff violated. The property was destroyed by fire and plaintiff demanded payment, which was refused on the ground of the non-payment of the last premium. Action was commenced and at the trial the defendant was

refused the privilege of amending its answer to include the violation of the iron safe clause. Plaintiff received a verdict, and defendant thereupon moved for a judgment non obstante veredicto and for an order that the amendment be included in the answer. The trial court granted these motions and entered judgment for defendant. On appeal the Supreme Court *held* that by not relying on the defense during the negotiations the defendant did not waive the right to the defense, but since at the trial the request for a directed verdict was properly denied, there was no foundation for judgment non obstante veredicto; and judgment was therefore ordered in accordance with the verdict. *Ennis* v. *Retail Merchants Assoc. Fire Ins. Co.*, (N. D. 1916) 156 N. W. 234.

The courts of this country have differed greatly as to what constitutes a waiver of defense by an insurance company, but since the case of *Brink* v. *Hanover Fire Ins. Co.*, 82 N. Y. 108, the following doctrine has been generally followed: "Such companies may refuse to pay a loss without specifying any ground, and when sued may insist on any available ground; but if they plant themselves upon any specified defense and so notify the assured, they should not be permitted to retract after he has acted on their position as announced, and incurred expense in consequence of it." The basis of this rule is the estoppel, and the difficult question before the courts has been to decide whether all the elements of a technical estoppel need be present. In general, the courts declare that some element of estoppel must be present. *Early* v. *Ins. Co.*, 178 Pa. 631; *Moore* v. *National Acc. Ass'n*, 38 Wash. 31; *Kerr* v. *Milwaukee Mech. Ins. Co.*, 117 Fed. 442; *Cassimus Bros.* v. *Scottish Union & Nat. Ins. Co.*, 135 Ala. 256; *Fraser* v. *Aetna Life Ins. Co.*, 114 Wis. 510. The reason for this being that the law does not favor forfeitures. See 2 BACON, INS. § 435 et seq. The knowledge of all the facts was held to be necessary to establish the waiver in *Security Ins. Co.* v. *Laird*, 182 Ala. 121, and the doctrine of the principal case supports the *Laird* case, since the defendant never learned of the breach of the iron safe clause until at the trial.

MARRIAGE—WHO MAY SUE TO ANNUL?—The plaintiffs individually and as the committee of the person and estate of X, a lunatic, brought an action to annul his marriage on the ground of his incompetency at the time the marriage was contracted. The Domestic Relations Law of New York, § 7, provides that "an action to annul a void or voidable marriage may be brought only as provided in the Code of Civil Procedure." §§ 1747-1748 of the New York Code of Civil Procedure do not provide for a lunatic's committee annulling his marriage. *Held*, that the action was not maintainable in the name of the committee. *Walter* v. *Walter*, (N. Y. 1916) 111 N. E. 1081.

In 26 CYC. 911 the rule is laid down that "in case the injured party is insane and under guardianship, the suit should generally be brought in the name of the guardian." In *Crump* v. *Morgan*, 3 Ired. Eq. 91, 40 Am. Dec. 447 a committee was permitted to maintain an annulment suit in the name of the lunatic. By way of dictum the court stated that the committee might sue in his own name. The suit in the case of *Countess of Portsmouth* v. *Earl of Portsmouth*, 1 Hag. Ecc. 355, was brought by "John Charles, Earl of Ports-